

THE STATE OF NEW HAMPSHIRE

SUPREME COURT

In Case No. 2005-0742, State of New Hampshire v. Jacob Fairbrother, the court on April 25, 2007, issued the following order:

The defendant, Jacob Fairbrother, appeals his convictions on three counts of first degree assault, one count of felony criminal threatening and six counts of simple assault. He argues that the trial court erred in denying his motion to dismiss two of the first-degree assault indictments for lack of sufficient evidence and in excluding evidence of the victim's alleged attempt to intimidate a prospective defense witness. We affirm.

To prevail on a challenge to the sufficiency of the evidence, the defendant must show that, viewing the evidence in the light most favorable to the State, no rational trier of fact could have found guilt beyond a reasonable doubt. State v. Goupil, 154 N.H. 208, 224 (2006). All reasonable inferences derived from the evidence are viewed in the light most favorable to the State. Id. When the evidence is solely circumstantial, it must exclude all rational conclusions except guilt. State v. Littlefield, 152 N.H. 331, 350 (2005).

The defendant argues that the trial court erred in denying his motion to dismiss because the State failed to prove that the blowgun with which he committed the assault was a deadly weapon in the manner used. He contends that because the two challenged indictments charged that he knowingly caused bodily injury to another by means of a deadly weapon by causing a wound to the knee in one case and to the leg in the other, the only reasonable inference was that he was intentionally targeting that location.

We disagree that the indictments should be read so narrowly. Whether an item has been used as a deadly weapon is a factual issue that must be resolved by the jury based upon the totality of the circumstances. State v. Hull, 149 N.H. 706, 714-15 (2003). A weapon is deadly if it may be objectively understood to be capable of causing death or serious bodily injury in the manner in which it is used, intended to be used or threatened to be used. State v. Hatt, 144 N.H. 246, 248 (1999). The defendant had threatened to kill the victim before he shot the blowgun darts at her and he had previously shot darts into the wall where they remained imbedded. He concedes that if the victim were hit in the eye, a blowgun might cause serious bodily injury. Based upon the record before us, we find no error in the trial court's denial of the defendant's motion to dismiss.

The defendant also argues that the trial court erred in excluding evidence that the victim allegedly attempted to intimidate a prospective defense witness. Even if we assume that the trial court's ruling was in error, we conclude that any error was harmless. See State v. Pseudae, 154 N.H. 196, 202 (2006) (error is harmless only if on appeal State demonstrates beyond a reasonable doubt that verdict was not affected by error).

The evidence of the defendant's guilt was overwhelming. The victim's detailed testimony about the assaults was consistent with her injuries and with her previous descriptions given both immediately subsequent to the assaults and one year later. Her injuries were observed by several witnesses and documented in photographs. Therefore any error that the trial court may have committed was harmless.

Affirmed.

DALIANIS, DUGGAN and GALWAY, JJ., concurred.

**Eileen Fox,
Clerk**